

ARTICLE 5

EROSION AND SEDIMENT CONTROL

5-1 Intent. This Article shall provide for, both during and following development, the control of erosion and sedimentation, and shall establish procedures for the administration and enforcement of such controls.

5-2 Chapter Adjunctive to Other Provisions. It is intended that this chapter be adjunct to the Town of Warrenton's zoning and subdivision ordinances as such ordinance applies to the subdivision and development of land within the Town or to development on previously subdivided land within the Town.

5-3 Certain State Erosion and Sediment Control Provisions Adopted. Chapter Three of the Virginia Erosion and Sediment Control Handbook and the Virginia Erosion and sediment control regulations (VR625-02-00) amended by the Virginia Soil and Water Conservation Board, effective March 22, 1995, is hereby adopted in its entirety and incorporated herein by reference in this Article as though set out in full herein.

5-3.1 The Erosion and Sediment Control regulations of the Virginia Soil and Water Conservation Board, effective March 22, 1995, (VR 25-02-00), and as subsequently amended, are incorporated herein by reference. The text of these regulations is on file in the Office of the Director. (Amended by Council 6/8/99)

5-4 Definitions. For the purposes of this Article, the following words and phrases shall have the meanings respectively ascribed to them as follows:

Applicant: Any person submitting an erosion and sediment control plan for approval or requesting the issuance of a permit, when required, authorizing land disturbing activities to commence.

Approved Plan: That plan approved by the Planning Director, by the issuance of a land disturbing activity permit, which plan carries the permittee's proposed methodology for controlling erosion, sedimentation, and storm water runoff resulting from the proposed land disturbing activity.

Board: The Virginia Soil and Water Conservation Board.

Certified Inspector: Employees of the Town of Warrenton charged with on-site inspection of erosion and sediment control devices employed via this Article and who (i) hold a certificate of competence from the Board in the area of project inspection or (ii) is enrolled in the Board's training program for project inspection and successfully completes such program within one year after enrollment.

Certified Program Administrator: The Public Utilities Director of the Town of Warrenton or other employee of the Town of Warrenton who (i) holds a certificate of competence from the Board in the area of program administration or (ii) is enrolled in the Board's training program for program administration and successfully completes such program within one year after enrollment.

Clearing: Any activity which removes the vegetative ground cover, including but not limited to the removal of vegetation, root mat removal, and/or topsoil removal.

Conservation Plan, Erosion and Sediment Control Plan, or Plan: A document containing material for the conservation of soil and water resources of a unit or group of units of land. It may include appropriate maps, an appropriate soil and water plan inventory and management information with needed interpretations, and a record of decisions contributing to conservation treatment. The plan shall contain all major conservation decisions to assure that the entire unit or units of land will be so treated to achieve the conservation objectives.

District, or John Marshall Soil and Water Conservation District: A political subdivision of this Commonwealth organized in accordance with the provisions of Chapter 1, Section 21-1 et seq., of Title 21 of the Code of Virginia, 1950, as amended.

Erosion: The disintegration, detachment, carrying away, or wearing away of land surface by running water, wind, and/or other natural agents.

Erosion Impact Area: An area of land not associated with current land disturbing activity but subject to persistent soil erosion resulting in the delivery of sediment onto neighboring properties or into state waters. This definition shall not apply to any lot or parcel of land of ten thousand (10,000) square feet or less used for residential purposes.

Excavating: Any digging, scooping, or other method of removing earth materials.

Filling: Any depositing or stockpiling of earth materials.

Governing Body: The Town Council of Warrenton, Virginia.

Grading: Any excavating or filling of earth materials or any combination thereof, including the land in its excavated or filled condition.

Land Disturbing Activity: Any land change which may result in soil erosion from water or wind and the movement of sediments into state waters or onto lands in the Commonwealth, including, but not limited to, clearing, grading, excavating, transporting, and filling of land. The term shall not include those activities identified in Section 5-7, Exceptions.

Land Disturbance Permit: A permit issued by the Town for clearing, filling, excavating, or transporting of soil, or any combination thereof.

Local Erosion and Sediment Control Program, or Local Control Program: An outline of the various methods employed by a district or locality to regulate land disturbing activities and thereby minimize erosion and sedimentation in compliance with the state program and may include such items as local ordinances, policies and guidelines, technical materials, inspection, enforcement, and evaluation.

Owner: The owner or owners of the freehold of the premises or lesser estate therein, a mortgagee, or vendee in possession, assignee of rents, receiver, executor, trustee, lessee, or other person, firm, or corporation in control of a property.

Permittee: The person to whom the permit authorizing land disturbing activities is issued or the person who certifies the approved erosion and sediment control plan will be followed.

Person: Any individual, partnership, firm, association, joint venture, public private corporation, trust, estate, commission, board, public or private institution, utility, cooperative, county, city, town, or other political subdivision of the Commonwealth, any interstate body, or other legal entity.

Plan Approving Authority: The Board, the Town of Warrenton, or the Public Utilities department of the Town of Warrenton responsible for determining the adequacy of a conservation plan submitted for land-disturbing activities on a unit(s) of land and for approving plans.

Sediment: Solid material, both mineral and organic, that is in suspension, is being transported, or has been moved from its site or origin by air, water, gravity, or ice and has come to rest on the earth's surface, either above or below sea level.

State Erosion and Sediment Control Program, or State Program: The program administered by the Virginia Soil and Water Conservation Board pursuant to Article 4, Chapter 5, Title 10.1 of the Code of Virginia, 1950, as amended, including regulations designed to minimize erosion and sedimentation.

State Waters: All waters on the surface and under the ground wholly or partially within or bordering the Commonwealth or within its jurisdiction.

Town: The Town of Warrenton, Virginia, a municipal corporation.

Transporting: Any moving of earth materials from one place to another, other than such movement incidental to grading, when such movement results in destroying the vegetative ground cover, either by tracking or by the buildup of earth materials to the extent that erosion and sedimentation will result from the soil or earth materials over which such transporting occurs.

5-5 Application. No person may engage in any land disturbing activity, until such person has submitted to the Planning Director, and has been reviewed and approved by the Town, an erosion and sediment control plan for such land disturbing activity and necessary bond has been posted and a permit issued, pursuant to this Article.

5-6 Permit Required. Except as provided for in Section 5-4 of this Article, no person shall engage in any kind of land disturbing activity, as defined in Section 5-5 of this Article, within the Town of Warrenton until they have acquired a Land Disturbance Permit.

Whenever a land disturbing activity is proposed to be conducted by a contractor performing construction work pursuant to a construction contract, the preparation, submission, and approval of the required erosion and sediment control plan shall be the responsibility of the owner of the land.

5-7 Exceptions. In no instance shall the provisions of this Article be construed to apply to the following:

1. Minor land disturbing activities such as home gardens and individual home landscaping, repairs, maintenance work.
2. Individual service connections.
3. Installation, maintenance, or repair of any underground public utility lines when such activity occurs on an existing hard surfaced road, street, or sidewalk, provided the land disturbing activity is confined to the area of the road, street, or sidewalk, which is hard surfaced.
4. Septic tank lines or drainage fields unless included in an overall plan for land disturbing activity relating to construction of the building to be served by the septic tank system.
5. Surface or deep mining.
6. Exploration or drilling for oil and gas including the well site, roads, feeder lines, and off-site disposal areas.
7. Tilling, planting, or harvesting or agricultural, livestock feedlot operations, horticultural, or forest crops, including engineering operating as follows: construction of terraces, terrace outlets, check dams, desilting basins, dikes, ponds, ditches, strip cropping, lister furrowing, contour cultivating, contour furrowing, land drainage, and land irrigation; however, this exception shall not apply to harvesting of forest crops unless the area on which the harvesting occurs is reforested artificially or naturally in accordance with the provisions of Article 4, Section 10.1-560, et seq. of the Code of Virginia of 1950 or is converted to bona fide agricultural or improved pasture use as described in § 10.1-1163 of the Code of Virginia.
8. Repair or rebuilding of the tracks, right-of-way, bridges, communication facilities, and other related structures and facilities of a railroad company.
9. Agricultural engineering operations including but not limited to the construction of terraces, terrace outlets, check dams, desilting basins, dikes, ponds not required to

comply with the provisions of the Dam Safety Act, Chapter 8.1 (Section 62.1-115.1 et seq.) of the **Code of Virginia**, 1950, as amended, ditches, strip cropping, lister furrowing, contour cultivating, contour furrowing, land drainage, and land irrigation.

10. Disturbed land area of less than two thousand (2,000) square feet in size.

11. Installation of fence and sign posts or telephone and electric pole and other kinds of posts or poles.

12. Emergency work to protect life, limb, or property, and emergency repairs; however, if the land disturbing activity would have required an approved erosion and sediment control plan, if the activity were not an emergency, then the land area disturbed shall be shaped and stabilized in accordance with the requirement of the plan-approving authority.

5-8 Conditions of Issuance and Fees. The issuance of the Land Disturbance Permit shall be conditioned on an approved erosion and sediment control plan, which plan, or certification of which plan, shall be presented at the time of application for such permit. For the purposes of this Article, when the land disturbing activity will be required of a contractor performing construction work pursuant to a construction contract, the preparation, submission, and approval of an erosion and sediment control plan shall be the responsibility of the owner; and, in addition, the requirements of Section 5-15 of this Article, concerning a performance bond with surety, cash escrow, letter of credit, any combination thereof, or such other legal arrangement and is acceptable under the provisions of Section 5-15, shall be met.

A reasonable fee to defray the cost of program administration, control plans shall be paid to the town, not to exceed an amount commensurate with the services rendered, taking into consideration the time, skill and Administrator's expense, involved along with the Construction Inspector's time, calculated as follows:

Bond Management & Administration fee (base fee): \$300.00*

Addition for:

- 1) Single Family residential developments: \$20.00/lot
- 2) Townhouse, multi-family and commercial/industrial developments: \$50.00 per acre or portion of disturbed land.

*A single family detached residence shall be total of \$50.00.

5-9 Erosion Impact Areas. The governing body may designate areas in the town which shall be classified as Erosion Impact Areas. Any such designation and classification shall be deemed to be a component of the local control program. Consistent with this Article, and in order to prevent further erosion, the Administrator may require the approval of a conservation plan for any Erosion Impact Area. Such plan shall be subject to all review, bonding, inspection and enforcement provisions of this Article which apply to Land Disturbance Permits. The plan must be submitted by the property owner.

5-10 Plan, Generally.

5-10.1 Required Contents Generally. An erosion and sedimentation control plan shall be required under this Article. The erosion and sedimentation control plan shall detail those methods and techniques to be utilized in the control or erosion and sedimentation.

Where land-disturbing activities involve lands under the jurisdiction of more than one local control program an erosion and sediment control plan may, at the option of the applicant, be submitted to the Board for review and approval rather than to each jurisdiction concerned. Where the land-disturbing activity results from the construction of a single-family residence, an agreement in lieu of a plan may be substituted for an erosion and sediment control plan if executed by the plan-approving authority.

5-10.2 Format. As a minimum, the erosion and sedimentation control plan shall follow the format as set forth in the Virginia Erosion and Sediment Control Handbook, which by reference is adopted as part of this Article.

5-10.3 Standards and Specifications. Approved standards and specifications for control techniques to be utilized in preparing the plan are set forth in the Virginia Erosion and Sediment Control Handbook, which by reference is adopted as part of this Article.

5-11 Plan Submission. If filed separately from a site development plan, three (3) copies of the erosion and sediment control plan shall be submitted to the Administrator. Is submitted with the site development plan, the erosion and sediment control plan shall accompany each copy of the site plan submission.

5-12 Approved Plan. An approved plan is required before the issuing of any other building or development permits.

5-13 Plan, Action. Any erosion and sedimentation plan submitted under the provisions of the Article will be acted on within forty-five (45) days from receipt by either approving or disapproving in writing and, if disapproved, giving specific reasons for such disapproval. If no formal action has been taken by the plan approving authority within forty-five (45) days after receipt of a plan, the plan shall be deemed approved.

5-14 Plan Amendments. An approved plan may be changed by the plan approving authority in the following cases:

- a. where inspection has revealed that the plan is inadequate to satisfy applicable regulations; or
- b. where the person responsible for carrying out the approved plan finds that because of changed circumstances, or for other reasons, the approved plan cannot be effectively carried out, and proposed amendments to the plan, consistent with the requirements of this Article, are agreed to by the plan approving authority and the person responsible for carrying out the plan.

5-15 Bonding. Prior to the issuance of any permit, the Administrator shall also require an applicant to submit a reasonable performance bond with surety, cash escrow, letter of credit, any combination thereof, or such other legal arrangement acceptable to the Town Attorney for the Town of Warrenton, to ensure that measures could be taken by the Town, at the applicant's expense, should they fail, after proper notice, within the time specified to initiate or maintain appropriate conservation action which may be required of them by the approved plan as a result of their land disturbing activity. This cash escrow, letter of credit, or other acceptable legal arrangement will provide

for a right-of-entry by representatives of the Town, for purposes of inspection, reinstallation, maintenance, or any conservation practices as may be necessary.

- a. If the Town takes such conservation action upon such failure by the permittee, the agency may collect from the permittee for the difference should the amount of the reasonable cost of such action exceed the amount of the security held.
- b. Within sixty (60) days of the achievement of adequate stabilization of the land disturbing activity, the bond, cash escrow, letter of credit, or other legal arrangement, or the unexpended or unobligated portion thereof, shall be refunded to the applicant or terminated.
- c. These requirements are in addition to all other provisions of this Article relating to the issuance of such permits and are not intended to otherwise affect the requirements for such permits.

5-16 Inspections and Enforcement, Generally. Inspections will rest with the Town's Construction Inspector and enforcement shall rest with the Administrator.

5-17 Monitoring, Reports, and Inspections. The Construction Inspector, through the Administrator shall: (i) provide for periodic inspections of the land disturbing activity, and (ii) may require monitoring and reports from the person responsible for carrying out the plan, to ensure compliance with the approved plan and to determine whether the measures required in the plan are effective in controlling erosion and sediment. The owner, permittee or person responsible for carrying out the plan, or operator shall be given notice of the inspection. If the plan approving authority through the Administrator determines that there is a failure to comply with the plan, notice shall be served upon the permittee or person responsible for carrying out the plan by registered or certified mail to the address specified in the permit application or in the mail to the plan certification, or by delivery at the site of the land disturbing activity to the agent or employee supervising such activities. The notice shall specify the measures needed to comply with the plan and shall specify the time within which such measures shall be completed. Upon failure to comply within the time specified, the permit may be revoked and the permittee or person responsible for carrying out the plan shall be deemed in violation of this Article and upon conviction shall be subject to the penalties provided in Section 5-8.

With respect to approved plans for erosion and sediment control in connection with all regulated land disturbing activities which require a permit, the Administrator may require of the person responsible for carrying out the plan such monitoring and reports, and may make such on-site inspections, after notice to that person, as are deemed necessary to determine whether the soil erosion and sediment control is performed, and whether such measures are effective in controlling soil erosion and sediment resulting from the land disturbing activity. Such person shall have the opportunity to accompany the inspector on any on-site inspection.

After land clearing operations have begun, no area shall be denuded for more than thirty (3) days unless authorized by the Administrator. All trenches for storm, sewer, water, and gas lines are to be backfilled, compacted, seeded, and mulched within seven (7) days of backfill.

5-18 Acceptance of Performance. Upon completion of an approved erosion and sedimentation control plan, the permittee shall notify the Administrator of such completion. The Town Construction Inspector shall then inspect the work and plantings, and upon their determination that they are in compliance with the approved plan, they shall notify the Administrator, who shall issue a letter of preliminary acceptance. A condition of any such preliminary acceptance shall be that the applicant or permittee guarantee all erosion and sedimentation control work for a period of one (1) year from the date of its preliminary acceptance, or for a period of one (1) year from repair or replanting ordered by the Administrator, until such time that all control structures and a minimum of ninety (90) percent of all plantings shall have survived for a year without need of further replanting or repair. The Administrator may order in writing such replanting or repair work as shall be deemed necessary to enforce compliance with the approved plan and guarantee at any time during the one (1) year period. Such an order shall serve to revoke the preliminary acceptance and shall cause the applicant to renew the guarantee for an additional one (1) year from the date of replanting or repair. Final acceptance shall occur when preliminary acceptance has remained unrevoked for a period of one (1) year, or when all control structures and a minimum of ninety (90) percent of all plants have survived for a period of one (1) year without need of further replanting or repair. For the purposes of this Article, normal cleaning of silt basins alone shall not be construed to be repair work.

5-19 Appeals. Final decisions of the Administrator under this Article shall be subject to review by the Town Council, provided, that an appeal is filed within thirty days from the date of any written decision by the Administrator.

Final decisions of the Administrator or Town Council under the Article shall be subject to review by the Fauquier County circuit court, provided, that an appeal is filed within thirty (3) days from the date of the final written decision of Town Council.

5-20 Violations; Remedies; Civil Penalties; Notice.

5-20.1 Stop Work Order. Upon receipt of a sworn complaint of a violation of this Article from the representative of the program authority or the Board responsible for ensuring program compliance, the chief administrative officer of the program authority or the Board may, in conjunction with or subsequent to a notice to comply as specified in subsection A above, issue an order requiring that all or part of a land-disturbing activities permitted on the site be stopped until the specified corrective measures have been taken or, if land-disturbing activities have commenced without an approved plan requiring that all of the land-disturbing activities be stopped until an approved plan or any required permits are obtained. Where the alleged noncompliance is causing or is in imminent danger of causing harmful erosion of lands or sediment deposition in waters within the watersheds of the Commonwealth, or where the land-disturbing activities have commenced without an approved plan or any required permits, such an order may be issued whether or not the alleged violator has been issued a notice to comply as specified in subsection A above. Otherwise, such an order may be issued only after the alleged violator has failed to comply with a notice to comply. The order shall be served in the same manner as a notice to comply, and shall remain in effect for seven days from the date of service pending application by the enforcing authority or alleged violator for appropriate relief to the circuit court of the jurisdiction wherein the violation was alleged to have occurred. If the alleged violator has not obtained an approved plan or any required permits within seven days from the date of service of the order, the chief administrative officer or his designee may issue an order to the owner requiring that all construction and other work on the site other than corrective measures be stopped until an approved plan or any required permit have been obtained. Such an order shall be served upon the owner by registered or certified mail to the address specified in the permit application or the land records of the locality in which the site is located. The owner may appeal the issuance of an order to the circuit court of the jurisdiction wherein the violation was alleged to have occurred. Any person violating or failing, neglecting, or refusing to obey an order issued by the chief administrative officer or his designee may be compelled in a proceeding instituted in the circuit court of the jurisdiction wherein the violation was alleged to have occurred to obey same and to comply therewith by

injunction, mandamus or other appropriate remedy. Upon completion and approval of corrective action or obtaining an approved plan or any required permits, the order shall immediately be lifted. (Amended by Town Council, 6/8/99)

5-20.2 Civil Penalties, generally. Except as set out immediately herein below, any person who violates this Article may be liable to the Town in a civil action for civil penalties of One Hundred Dollars (\$100.00) for any one violation. Each day during which the violation is found to have existed shall constitute a separate offense. The total civil penalties for a series of specified violations arising from the same operative set of facts shall not exceed Three Thousand Dollars (\$3,000.00).

Notwithstanding the foregoing, the civil penalty for commencement of land-disturbing activities without an approved permit as provided in § 5-13 shall be One Thousand Dollars (\$1,000.00), except that civil penalties for a series of violations arising from the commencement of land-disturbing activities without an approved plan for any site shall not exceed a total of Ten Thousand Dollars (\$10,000.00).

5-20.3 Injunctions and Other Relief. Notwithstanding any other relief or remedy available under this Article, the Administrator may apply to the Circuit Court of Fauquier County for injunctive or such other equitable relief as might be appropriate in the case of a violation or threatened violation of any of the provisions of the Article, without the necessity of showing that there does not exist an adequate remedy at law.

5-20.4 Notice of Violation. In no case shall the Administrator begin legal action to enforce the provisions of this Article unless and until they have first given, or made diligent effort to give, specific notice to the applicant or permittee, as the case may be, of any violation of this Article for which such legal or equitable relief is to be sought. Such notice shall give the applicant or permittee a reasonable opportunity under the particular circumstances to correct the situation before the enforcement action is brought.

5-20.5 Civil Penalties. Any person violating or failing, neglecting, or refusing to obey any injunction, mandamus, or other remedy obtained pursuant to this Article shall be subject, in the discretion of the court, to a civil penalty not to exceed \$2,000 for each violation.

5-20.6 Cumulative Remedies. The remedies provided for in this Article shall be cumulative in the sense that the imposition of, or attempt to impose, one (1) remedy shall

not act as a restriction of any right to impose or attempt to impose, any other remedy authorized by this Article.

5-20.7 Administrative Fines. With the consent of any person who has violated or failed, neglected or refused to obey any regulation or order of the Administrator, or any condition of a permit or any provision of this Article, the Town Council, or the Administrator may provide, in an order issued by the Town Council or the Administrator against such person, for payment of civil charges for violations in specific sums, not to exceed Two Thousand Dollars (\$2,000) for each violation. Such civil charges shall be instead of any appropriate civil penalties which could be imposed as outline in Section 5-20.5.

5-21 Criminal Penalties - Misdemeanor.

Violators of this Article shall be guilty of a Class One misdemeanor and subject to a fine not exceeding \$2,500, or twelve months imprisonment in jail, or both, for each violation.